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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Sudan

Note by the Secretary-General*

In its resolution 2005/82, adopted without a vote on 21 April 2005, the Commission on Human Rights decided to establish the mandate of a special rapporteur on the situation of human rights in the Sudan for one year to monitor the situation of human rights in the Sudan and requested the Special Rapporteur to submit an interim report to the General Assembly at its sixtieth session and to report to the Commission at its sixty-second session. Sima Samar (Afghanistan) was appointed by the Chairperson of the sixty-second session of the Commission and accepted her nomination in August 2005. She will be conducting her first mission to the Sudan in October 2005 and will therefore not be able to submit a written report to the General Assembly but will make an oral presentation.

* The present report was submitted late owing to the need for consultations.

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Item 73 (b) of the provisional agenda*
Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights of migrants

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report submitted by the Special Rapporteur of the Commission on Human Rights on the human rights of migrants, Jorge Bustamante, in accordance with General Assembly resolution 59/194.

Summary

I am submitting this report to the General Assembly in accordance with General Assembly resolution 59/194. In my report, I make some preliminary observations regarding migration and the human rights of migrants and briefly describe the methods of work I will use in fulfilling my functions as Special Rapporteur.

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* A/60/150.
** This report is submitted late in order to reflect updated information.

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I. Introduction

1. At its fifty-fifth session, the Commission on Human Rights, decided, in resolution 1999/44 of 27 April 1999, to appoint for a three-year period a special rapporteur on the human rights of migrants to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation.

2. In accordance with that resolution, since 1999 the Special Rapporteur has submitted six reports to the Commission on Human Rights and two interim reports to the General Assembly.

3. In a letter dated 29 July 2005, the Chairperson of the Commission on Human Rights at its sixty-first session appointed me Special Rapporteur on the human rights of migrants. I should like to take this opportunity to express my gratitude to Ms. Gabriela Rodriguez Pizarro for her major contribution to the question of the human rights of migrants from 1999 to 2005.

4. This report is submitted in accordance with General Assembly resolution 59/194 and Commission on Human Rights resolution 2005/47. I officially assumed the mandate on the question of the human rights of migrants on 3 August 2005 and in this report, therefore, I shall limit myself to some preliminary observations, which will be developed further in my next report to the Commission.

II. Preliminary observations

5. International migration is a growing phenomenon because it is linked to globalization. That growth can be measured by the increased trade in goods and services between nations, which in turn cannot be maintained without flows of migrants and of the information and ideas which motivate them to cross borders. The increasing attention being paid by Governments to the phenomenon of international migration may be attributed to the growth in the numbers of migrants but that attention has not been matched by equal treatment in terms of their human rights. The General Assembly decided to respond to the obvious and continuing deterioration in the treatment of migrants by designating international migrants as a vulnerable group. That designation not only focused special attention on the part of the Organization to that group but also facilitated analysis of the root cause of the problem and possible solutions. If the concept of vulnerability is defined as meaning that migrants, by the very fact of being migrants, are disadvantaged with regard to the other members of their host society, which defines them as such, their situation may be described as a situation of legal and social inequality which makes a distinction between nationals and aliens. That distinction is generally considered to be one of the most important acts of sovereignty, warranting inclusion in the Constitution as one of the fundamental elements defining the nation. The definition of who is or is not a national not only defines the community to which national sovereignty is entrusted, but also establishes a criterion which becomes a source of inequality between nationals and non-nationals, in other words, aliens.

6. This conceptual context leads us to the question of the juridical and social nature of the relations in practice between those who are constitutionally defined as nationals, and aliens. There are many possible responses. As Special Rapporteur of

the Commission on Human Rights on the human rights of migrants I will begin my programme of work by focusing on the context of labour markets as the juridical and social framework in which the main interaction between nationals and aliens, or immigrants, occurs, with a view to clarifying the relationship between international migration and human rights. In explaining the role played by the latter in the juridical and social context of international labour markets where they come into play, the terms immigrant and alien will be used interchangeably.

7. If we look at the list of countries whose legislative bodies have approved the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families we see that of the more than 30 countries which have ratified this international instrument, there is not one host country from among the countries experiencing major migratory flows in the world. That is indicative of the difference between the countries of origin and the host countries, a difference attributable both to national interests and to values and preferences which become clear when a decision is taken on whether or not to ratify the Convention, which is certainly the most comprehensive international instrument on the human and labour rights of international migrants which has existed to date. We must therefore seek to better understand the factors which influence host countries in their decision not to ratify, and some of the countries of origin in their decision to ratify, the Convention.

8. Of the relevant factors identified in the host countries, one common denominator seems to be a certain resistance to explicitly recognizing that there is a demand for the labour supplied by immigrants, or aliens, in spite of the scientific evidence proving that demand exists and attracts migrant workers.

9. The reluctance to recognize the demand for the labour of migrant workers, which is a common factor among the host countries, acquires heuristic importance when it becomes clear that there is some relationship between that reluctance and the appearance of anti-immigrant ideologies often tinged with xenophobia and racism.

10. The sequence of events originating with the reluctance to recognize the demand for the labour provided by migrants could be outlined as follows:

- Existence of a demand for the labour supplied by immigrants;
- Lack of public recognition of that situation;
- Growth of anti-immigrant ideologies;
- Growth in incidents involving violations of the human rights of immigrants;
- Increasing impunity for such violations;
- Increased criticism or sanctions on the part of the international community in relation to these violations.

III. Methods of work

11. Using the above hypothesis as a starting point, in the programme of work under my mandate I intend to analyse information on the following aspects:

- Real demand for migrant workers in member States, by sectors of the economy, over the past five years;
- Data on the number of unionized and non-unionized migrant workers by sectors of the economy, with a view to ascertaining the level of acceptance of the demand for immigrant labour;
- Data on indicators of changes in anti-immigrant ideologies such as statistics on police profiling of or hate crimes against aliens;
- Statistics on crimes committed against immigrants and penalties imposed, which should help in assessing the degree of impunity for violations of the human rights of migrants, in particular with regard to their physical integrity and assets.

12. Coordination and consultation with other international and national bodies working directly or indirectly in the field of migration and the human rights of migrants will be essential.

13. During my mandate I intend to cooperate with other special procedures of the Commission on Human Rights so that whenever possible the various special procedures whose mandate covers situations which affect the human rights of migrants may speak with a single voice. In that same spirit, I intend to cooperate with the bodies responsible for the implementation of international human rights treaties, in particular the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. In carrying out my mandate as Special Rapporteur, both in defining and in implementing my plan of work, I will maintain a dialogue with Governments, international organizations, non-governmental organizations and other civil society organizations, including migrants themselves, and all stakeholders involved in the protection and promotion of the human rights of migrants.